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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1257 OF 2004

Shri Mahesh Gokuldas Tanna)
Aged 38 years R/o. A/1, Vyas)
Apartment, Model Town, Four)
Bunglow, Andheri (West), Mumbai,)
at present detained at Nashik)
Prison at Nasik.) ... Petitioner
(Detenu)

Versus

1. Shri A.N. Roy,)
Commissioner of Police,)
Mumbai.)

2. The State of Maharashtra,)

3. The Superintendent,
Nashik Road Central Prison,)
Nashik.) ... Respondents

Mr. U.N. Tripathi for the petitioner.

Ms. A.S. Pai, A.P.P. for the State.

CORAM: SMT. RANJANA DESAI &
A.S. OKA, JJ.

DATED: 22ND SEPTEMBER, 2004.

ORAL JUDGMENT:- (**Per Smt. Ranjana Desai, J.**)

1. The petitioner (for convenience, "the detenu") is detained under the order of detention dated 30/4/2004 issued by the Commissioner of Police, Brihan Mumbai, under section 3(2) of the Maharashtra Prevention of Dangerous Activities of Slum Lords, Bootleggers, Drug Offenders and Dangerous Persons Act, 1981 (for short, "the said Act"). The order of detention, the grounds of

detention and the material in support thereof were served on the detenu on 28/5/2004. In this petition, the detenu has challenged the said order of detention.

2. The order of detention is based on two cases being C.R. No.50 of 2004 registered at the Kurla Police Station under section 387, 448, 504, 506 r/w section 34 of the Indian Penal Code (for short, "the IPC") and C.R. No.65 of 2004 registered at Kurla Police Station under sections 341, 387 and 34 of the IPC and two in-camera statements of witnesses "A" and "B" recorded on 9/3/2004 and 11/3/2004 respectively. Witness "A" has deposed about an incident which had taken place on 1/1/2004 and witness "B" has deposed about an incident, which had taken place on 1/2/2004.

3. We have head, at some length, Mr. Tripathi, the learned counsel appearing for the petitioner-detenu and Ms. Pai, learned A.P.P. appearing for the State.

4. Mr. Tripathi, the learned counsel for the detenu contended that the order of detention deserves to be set aside on the ground of non-application of mind of the detaining authority to eight vital documents. He contended that the said documents viz. bail applications, remand applications and letters of Senior Police Inspector of Kurla Police Station addressed to Additional Chief Metropolitan Magistrate, Mumbai, were obtained from the court on 30/4/2004. The order of

detention is issued on 30/4/2004. The said documents are certified as true on 5/5/2004 by the Senior Police Inspector of Kurla Police Station. The said documents were not forwarded along with the proposal and they were not available to the detaining authority when he formulated the grounds of detention. They were, therefore, not considered by the detaining authority while formulating the grounds of detention. The detaining authority has not applied his mind to those vital documents and, therefore, his satisfaction is impaired.

5. It appears from the affidavit of the detaining authority that he had formulated the draft grounds of detention on 6/4/2004. The certified copies of the documents about which grievance is made were applied for on 28/4/2004 and the copies were received on 30/4/2004. The sponsoring authority forwarded these documents to the detaining authority before he issued the detention order. They were received by him on 30/4/2004. On 30/4/2004 they were placed before him along with the proposal and other documents and, he re-formulated the grounds of detention. In the affidavit, the detaining authority has asserted that he had carefully gone through the eight documents and the other documents sent along with the proposal. It is further averred that after reconsidering the matter, he was subjectively satisfied and, hence, he issued the detention order. In our opinion, the submission of Mr. Tripathi that there was

non-application of mind of the detaining authority must be rejected because it is evident from the affidavit of the detaining authority that these documents were forwarded to him; that they were considered by him along with other documents and the proposal and, that on 30/4/2004, he had re-formulated the grounds after considering them and issued the detention order. This submission of Mr. Tripathi must, therefore, fail.

6. Mr. Tripathi then contended that there is a delay in recording the in-camera statements and passing the order of detention. He submitted that the two criminal cases being C.R. No.50 of 2004 and C.R. No.65 of 2004 were registered at Kurla Police Station against the detenu on 14/2/2004 and 22/2/2004 respectively. The two in-camera statements of witnesses "A" and "B" were recorded on 9/3/2004 and 11/3/2004 respectively, and the order of detention came to be issued on 30/4/2004 i.e. after a lapse of several days. He submitted that there is no proper explanation for this delay and, hence, the order of detention be set aside.

7. In reply to this contention, the detaining authority has stated that C.R. No.50 of 2004 was registered on 14/2/2004. The detenu was arrested on the same day. C.R. No.65 of 2004 was registered on 22/2/2004 and the detenu was shown arrested in that case on 23/2/2004. During the course of enquiry into the prejudicial activities of the detenu, two in-camera statements came

to be recorded on 9/3/2004 and 11/3/2004. Thereafter, the sponsoring authority went through all the material collected by it; prepared the necessary sets of documents; got them typed and xeroxed and, after the necessary sets were ready, the proposal for the detention of the detenu was submitted to the detaining authority on 19/3/2004. It is further stated that 13/3/2004 and 14/3/2004 were holidays. The proposal was first placed before the DCP, Zone V. He carefully went through all the papers and put his endorsement thereon on 22/3/2004. 21/3/2004 was a holiday. Thereafter, the papers were forwarded to the Senior Inspector of Police, PCB, CID. After carefully going through all the papers, he put his endorsement thereon on 25/3/2004. Thereafter, the papers were forwarded to the Deputy Commissioner of Police (Preventive), who after goring through them, put his endorsement thereon on 26/3/2004. Thereafter, the papers were forwarded to the Additional Commissioner of Police (Crime). After considering the proposal and the papers and the documents, he put his endorsement thereon on 5/4/2004. It is further stated that 27/3/2004, 28/3/2004, 30/3/2004, 3/4/2004 and 4/4/2004 were holidays. The papers were then put up before the detaining authority, who gave the approval to the proposal on 6/4/2004 after formulating the draft grounds of detention. All the documents were then forwarded to the sponsoring authority for the purposes of translation of documents in the language known to the detenu and for preparing necessary sets of the documents. After

completing all the necessary work, the necessary sets of documents were received in the office of the Senior Police Inspector, PCB, CID. The Senior Inspector of Police, PCB, CID, Mumbai, checked all the documents and put his endorsement thereon on 29/4/2004. Thereafter, further eight documents which became available were placed before the detaining authority on 30/4/2004. He considered them along with the proposal and other documents and re-formulated the grounds of detention on the same day and on the same day i.e. on 30/4/2004 he issued the order of detention. In our opinion, therefore, there is no delay in issuing the order of detention. The time taken by the detaining authority to issue the detention order has been properly explained. There is no inordinate unexplained delay. It cannot be said that on account of time taken for issuing the order of detention, the live link between the prejudicial activities in which the detenu is involved and the need to detain him is snapped. This submission of Mr. Tripathi is, therefore, rejected.

8. Lastly, Mr. Tripathi urged that the grounds of detention pertain to incidents which merely affect law and order and not public order. We are unable to agree with the learned counsel. We have carefully perused the grounds of detention. The detenu has adopted a novel modus operandi. It appears that he is using video camera for the purposes of extortion. The grounds of detention show that he is visiting the shops of businessmen with

video camera and giving them threats that he would make a video recording of the business and telecast it on the news. It appears that after blackmailing the businessmen in this manner, the detenu is extorting huge amounts from them.

9. The first incident pertains to the threat given to one Madanlal Bhawanlal Sethiya by the detenu at about 18.00 hrs. on 13/2/2004 when he was present in his shop. The detenu and his associate Munnalal Kanhayalal Rajbhar entered his shop. The detenu's associate was having video camera in his hand. The detenu and his associate pushed the complainant in the shop and started video recording. The detenu told the complainant that he is a reporter of 'Mera Bharat Samachar' and also a T.V. reporter and since the complainant was selling kerosine and turpentine without licence, he would publish it as a news in the newspaper and also telecast it. He told the complainant that if an amount of Rs.50,000/- was given to him, the matter could be settled. The complainant reported the matter to the Kurla Police Station and a case was registered against the detenu and his associate vide C.R. No.50 of 2004 under sections 385, 448, 504, 506 and 34 of the IPC. Section 385 was subsequently altered to section 387 of the IPC.

10. The second incident is also of similar type where the complainant one Bhawarlal Devilalji Kumhar, who is doing the business of transportation of white kerosine,

turpentine and paints, was driving his tempo along L.B.S. Marg. The tempo was loaded with white kerosene, paint and turpentine. The detenu's associate, who was riding a motor cycle, overtook the tempo and forced the complainant to stop. The detenu's associate then told the complainant that the material in the tempo was spurious and he wanted to check the same. The complainant told him that he was not carrying any illegal material and had valid receipt for the same. But, the detenu's associate insisted that the shutter of the tempo should be opened. At that time, the detenu and his other associate arrived there. The detenu's other associate was having a video camera in his hand. The detenu forced the complainant to open the door of the tempo. The detenu took out one sharp knife and by pointing it to the complainant threatened him and told him that he would make news out of this incident. By the time, people who had gathered there to see the video recording, ran away helter-skelter out of fear. After opening the door of the tempo, the detenu and his associates made a video recording of the material, which was in the tempo. Thereafter, the detenu and his associates threatened the complainant and told him that they are going to telecast it as a news and if the complainant did not want it, he would have to pay Rs.10,000/- per month as hafta. The complainant told him that he did not have that much amount with him and was ready to give Rs.5,000/- within a week. Thereafter, the complainant was threatened and he was allowed to go. The complainant

was told that he should not report the matter to the police. The complainant then lodged a criminal complaint against the detenu at the Kurla Police Station being C.R. No.65 of 2004 under sections 341, 387 and 34 of the IPC.

11. Statements of witnesses "A" and "B" are also of similar nature. The detenu and his associates have threatened the businessmen in the similar manner and asked for hafta. In our opinion, such incidents clearly affect the even-tempo of the life of the society. This submission of Mr. Tripathi must, therefore, fail. No other submissions were advanced by Mr. Tripathi.

12. In the view that we have taken, the petition is dismissed.

13. All concerned to act on ordinary copy of this order duly authenticated by the Personal Assistant/Sheristedar of this court.

(SMT. RANJANA DESAI, J.)

(A.S. OKA, J.)